

# Mid-Atlantic Regional Council

for Small Business Education and Advocacy

Legislative Committee

## Legislative Highlights

24 October 2006

Sheraton Oceanfront Hotel  
Virginia Beach, VA



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, DC 20416

DATE: October 16, 2006

TO: Luz Hopewell  
Associate Administrator  
Office of Business Development

FROM: John Klein  
Associate General Counsel

RE: Inflationary Adjustment of the 8(a) BD Competitive Dollar Threshold

You have asked us to determine whether there has been an increase in the amount of the dollar threshold at which acquisitions offered for award under the 8(a) Business Development program must be competed. Under the authority of recently enacted legislation, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council jointly amended the Federal Acquisition Regulation to increase the 8(a) BD competitive dollar threshold for manufacturing contracts from \$5 to \$5.5 million, and for all other contracts from \$3 to \$3.5 million. Since that regulatory amendment became effective on September 28, 2006, the 8(a) BD program office may properly apply the increased thresholds to 8(a) BD acquisitions offered on or after September 28, 2006. In addition, as a result of the FAR change, the competitive dollar thresholds included in 13 C.F.R. § 124.506(a)(ii) should be amended to correspond to the new thresholds set forth in FAR § 19.805-1(a).

Analysis

In 2004, Congress passed new legislation requiring an inflationary adjustment of statutory acquisition-related dollar thresholds every five years. Specifically, Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, codified at 41 U.S.C. § 431a, dictates that:

- (1) On October 1 of each year that is evenly divisible by five, the Federal Acquisition Regulatory Council shall adjust each acquisition-related dollar threshold provided by law, as described in subsection (c) of this section, to the baseline constant dollar value of that threshold.

(2) For the purposes of paragraph (1), the baseline constant dollar value--

(A) for a dollar threshold in effect on October 1, 2000, that was first specified in a law that took effect on or before such date shall be the October 1, 2000, constant dollar value of that dollar threshold; and

(B) for a dollar threshold specified in a law that takes effect after October 1, 2000, shall be the constant dollar value of that threshold as of the effective date of that dollar threshold pursuant to such law.

41 U.S.C. § 431a(a). The legislation further requires that the FAR Council publish a notice of the adjusted dollar thresholds in the *Federal Register* and that the adjusted dollar thresholds take effect on the date of publication. 41 U.S.C. § 431a(b).

In clarifying the specific acquisition-related dollar thresholds that are subject to the mandated periodic adjustments, the legislation indicates that it applies to:

a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as determined by the Federal Acquisition Regulatory Council.

41 U.S.C. § 431a(c). The only exemptions the legislation expressly provides are the acquisition-related thresholds established by the Davis-Bacon Act, the Service Contract Act or trade agreements. 41 U.S.C. § 431a(d).

In accordance with the dictates of 41 U.S.C. § 431a, on December 12, 2005, the FAR Council issued a rule proposing to adjust statutory acquisition-related thresholds for inflation. 70 Fed. Reg. 73415 (2005). The rule also proposed an inflationary escalation of some non-statutory acquisition-related thresholds that originated in policy or regulations. The FAR Council explained:

The statute defines an acquisition-related dollar threshold as a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of supplies or services by an executive agency, as determined by the FAR Council. There are other thresholds in the FAR that, while not meeting this statutory definition of "acquisition-related," nevertheless meet all the other criteria. These thresholds may have their origin in executive order or regulation. Therefore, an acquisition-related threshold, for the purposes of this rule, is a threshold that is specified in law, executive order, or regulation as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law, executive order, or regulation to the procurement of supplies or services by an executive agency, as determined

by the FAR Council. Acquisition-related thresholds are generally tied to the value of a contract, subcontract, or modification. Examples of thresholds that the Councils do not view as "acquisition-related" are thresholds relating to claims, penalties, withholding, payments, required levels of insurance, small business size standards, liquidated damages, etc

*Id.*

The FAR Council developed a matrix that includes a calculation of the applicable escalation based on the Consumer Price Index. As applied, the escalation factor resulted in proposed increases in the statutory 8(a) BD competitive dollar threshold for manufacturing contracts from \$5 to \$5.5 million, and for all other contracts from \$3 to \$3.5 million.

On September 28, 2006, the FAR Council published in the *Federal Register* a final rule implementing 41 U.S.C. § 431a. The final rule noted that the FAR Council received eight responses to its proposed inflationary adjustments to the acquisition thresholds. All eight responses were from government personnel who commented primarily on the proposed increase in the micro-purchase threshold. 71 Fed. Reg. 57363 (2006). As a result, with very limited exceptions, the final rule adopted all of the inflationary adjustments the FAR Council proposed on December 12, 2005. Further, consistent with the directives of 41 U.S.C. § 431a(b), the final rule established an effective date of September 28, 2006, the date of the final rule's publication in the *Federal Register*.

With respect to the 8(a) BD competitive threshold, the final rule indicated that it amended FAR § 19.805-1 by "removing from paragraph (a)(2) '\$5,000,000' and '\$3,000,000' and adding '\$5.5 million' and '\$3.5 million', respectively, in their place." Accordingly, as revised the new FAR § 19.805-1(a) now provides:

Except as provided in paragraph (b) of this subsection, an acquisition offered to the SBA under the 8(a) Program shall be awarded on the basis of competition limited to eligible 8(a) firms if—

- (1) There is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair market price; and
- (2) The anticipated total value of the contract, including options, will exceed \$5.5 million for acquisitions assigned manufacturing North American Industry Classification System (NAICS) codes and \$3.5 million for all other acquisitions.

Based on the expressed terms of 41 U.S.C. § 431a, the FAR Council possesses the requisite authority to implement an inflationary adjustment to statutory acquisition-related dollar thresholds, including the 8(a) competitive thresholds established under 15 U.S.C. § 637(a)(1)(D)(i). Since the effective date of the final rule adjusting the thresholds was September 28, 2006, the new FAR § 19.805-1(a) thresholds of \$5.5 and \$3.5 million are currently in effect and apply to 8(a) BD contract offerings submitted on and after that date. As a result, the existing thresholds set forth in 13 C.F.R. § 124.506(a) should be amended to correspond to the revised FAR § 19.805-1(a) thresholds.

If you have any questions concerning this matter, feel free to contact Denise Benjamin at 202-619-1799.

cc: Calvin Jenkins  
Arthur Collins  
Dean Koppel

## HIGHLIGHTS RELATED TO SMALL BUSINESS PROGRAMS

Page 1 of 4

October 2006

### REGULATORY CHANGES: FAR

**FINAL RULE:** Federal Acquisition Regulation; FAR Case 2004-033, Inflation Adjustment of Acquisition-Related Thresholds: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to adjust acquisition-related thresholds for inflation, in accordance with 41 U.S.C. 431a as added by section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). \* Micro-Purchase Threshold rose from \$2,500 - \$3,000 (FAR 19.502-2). Effective September 28, 2006. The Threshold for acquisitions under the SCA remains at \$2,500. The Threshold remains at \$2,000 for Davis-Bacon Act acquisitions. At FAR 19.805-1 (a) (2)- 8 (a) Competitive thresholds increased from \$5M to 5.5M Manuf. NAICS, and from \$3M-3.5M for other.

**INTERIM RULE:** Online Reps and Certs documentation when using ORCA  
**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to address the record retention policy where the Online Representations and Certifications Application (ORCA) is used to submit an offeror's representations and certification.

**DATES:** Effective Date: September 28, 2006.

**Comment Date:** Interested parties should submit written comments to the FAR Secretariat on or before November 27, 2006 to be considered in the formulation of a final rule.

4.1201 Policy.

\* \* \* \* \*

(c) Data in ORCA is archived and is electronically retrievable. Therefore, when a prospective contractor has completed representations and certifications electronically via ORCA, the contracting officer may reference the date of ORCA verification in the associated Government contract file, rather than including a paper copy of the electronically-submitted representations and certifications in the file. Such a reference satisfies contract file documentation requirements of 4.803(a)(11). However, if an offeror identifies changes to ORCA data pursuant to the FAR provisions at 52.204-8(c) or 52.212-3(k), the contracting officer must include a copy of the changes in the contract file.

**TOPIC:** Federal Acquisition Circular (FAC) 2005-13

**REFERENCE:** Federal Register, 28 Sep 06

**SUMMARY:** This FAC contains several final and interim rules, technical amendments, and corrections to the Federal Acquisition Regulation (FAR) that were effective on 28 Sep 06. Of special interest is the Final Rule to **FAR Case 2004-033, Inflation Adjustment of Acquisition-Related Thresholds**. This final rule adjusts many acquisition-related thresholds in the FAR for inflation, preventing burdensome requirements from applying to more and more acquisitions. Several frequently used thresholds that were adjusted include . . .

- The micro-purchase threshold (FAR 2.101) from \$2,500 to \$3,000. Note that the simplified acquisition threshold was not raised at this time.
- The cost and pricing data threshold (FAR 15.403-4) was raised from \$550,000 to \$650,000.
- The prime contractor subcontracting plan (FAR 19.702) floor will be raised from \$500,000 to \$550,000, but the floor for construction (\$1,000,000) is unchanged.
- Approval thresholds for sole source justifications required by FAR 6.304 are substantially changed. The contracting officer's certification threshold is increased from \$500,000 to \$550,000 and the threshold for senior procurement executive approval is increased from over \$75,000,000 to over \$78,500,000.

Acquisition-related threshold associated with the Davis-Bacon Act, Service Contract Act, and trade agreements were not adjusted. Contracting officers should review current thresholds to assure appropriate compliance is attained.

#### **Items of Interest**

**FY07 DOD APPROPRIATIONS (HR5631ENR/HRept109-676)**

**PRESIDENT ACTION PENDING**

Senate unanimously agreed this morning to the FY07 DoD Appn Conference Report HRept109-676, clearing the measure for bill enrollment (as HR5631ENR), and White House action. House agreed (394-22) to the Conference Report on 26 Sept.

**S. 3778 “A Bill to reauthorize and Improve the Small Business Act of 1958”**  
**House Democrats introduce contracting oversight bill**

BY Matthew Weigelt

Published on Sept. 14, 2006

Several House Democrats focused on contracting flaws introduced a bill Sept. 13 with measures to end contract abuses and begin more transparent practices, according to a press release.

The group called the House Democratic Waste, Fraud and Abuse Truth Squad introduced the Clean Contracting Act of 2006. The bill seeks strict limits on noncompetitive contracts, a ban on monopoly contracts and restrictions on the award of no-bid contracts to Alaska Native Corporations, according to the statement.

The act would require an agency to put at least 1 percent of its procurement budget toward contract oversight. It also directs Congress to hold investigative hearings on credible evidence of contracting abuses or mismanagement.

The bill would allow government to contract only with companies in good standing, and it allows agencies to pay award fees to contractors only for good performance.

Highlights: Sec. 522 Increase funding for the Office of Veterans Business Development, 07/\$2M, 08/\$2.1M, and 09/\$2.2M.

**Sec. 1003 – Removal of Impediment to contract Bundling Database Implementation**

Title VI Sec. 1101. Subcontracting Integrity. Contractor Compliance- Compliance of Federal Prime Contractor with Small Business Subcontracting plans shall be evaluated as a % of obligated prime dollars as well as a % of subcontracts awarded. Head of each Federal Agency will issue a policy on Small Business subcontracting compliance, including assignment of compliance responsibility between contracting, small business and program offices and periodic oversight & review activities.

Sec. 1102. Small Business Subcontracting “Bait-and-Switch” Fraud. Penalties for false certification.

Sec. 1104. Pilot Program on direct payments to subcontractors- If prime doesn’t pay subs on a timely basis; it’s a material breach of contract. Agency will hold what is due to subs and pay them directly.



Sec. 1105 Pilot Program on incentives & Mentor Protégé Remedial Assistance- provide contractual incentives to primes who exceed their subcontracting goals and primes who fail will fund the mentor protégé assistance for small business concerns. Determined in relation to the dollar amount by which the prime contractor failed. Annual report required.

Sec. 1301 Government wide Small Business Training. Special focus on the role of the small business specialist as a vital part of the acquisition team.

Sec. 1304. Meeting Small Business Goals. Section 15 of the SB Act (15 USC 644) as amended by this Act is amended by adding at the end the following: “ Meeting Small Business Goals- Before setting aside for small business, Contracting Officers shall consider setting aside the contract for SDVOSB, HUBZone, SDB, WO, HBCU/MI in the order in which the goals for such subcategories of Small Business concerns were not met by the agency in the FY before the FY of such consideration, from most deficient to the least deficient.

Sec. 1408. Size Standard Development- Tiered Size Standards, Administrator may establish 2 or more tiers within an overall small business size standard cap for purpose of the growth and development of the small business concern.

The National Defense Authorization Act for FY2006, requires the establishment and implementation of a management structure for the acquisition of services in the DoD. The new, implementing DoD policy, signed by the Under Secretary of Defense (Acquisition, Technology and Logistics), Mr. Ken Krieg, on October 2, 2006, is available at <http://akss.dau.mil/docs/2006-3064-ATL%20Complete.pdf>.

## IMPORTANT INFORMATION

### 8(a) Thresholds Increased

**Please be advised that the 8(a) sole source thresholds have increased. The new thresholds are \$3.5 million and \$5.5 million. The Office of General Counsel has informed the program office that SBA can now accept offerings at the new thresholds.**

**Please see the e-mail below for more information.**

**If you have any questions about this change to the FAR, please e-mail your questions to Teresa Lewis, AA for Management and Technical Assistance.**

[Federal Register: September 28, 2006 (Volume 71, Number 188)] [Rules and Regulations] [Page 57363-57374] From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr28se06-25] ----- DEPARTMENT  
OF DEFENSE GENERAL SERVICES ADMINISTRATION NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION 48 CFR Parts 1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 17, 19, 22, 25, 28,  
32, 36, 42, 48, 49, 50, 52, and 53 [FAC 2005-13; FAR Case 2004-033; Item IV; Docket 2006-  
0020, Sequence 17] RIN 9000-AK26 Federal Acquisition Regulation; FAR Case 2004-033,  
Inflation Adjustment of Acquisition-Related Thresholds AGENCIES: Department of Defense  
(DoD), General Services Administration (GSA), and National Aeronautics and Space  
Administration (NASA). ACTION: Final rule. -----  
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SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to adjust acquisition-related thresholds for inflation, in accordance with 41 U.S.C. 431a as added by section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). This rule also amends some acquisition-related thresholds that are based on policy rather than statute. Inflation adjustment of cost accounting standards (CAS) thresholds will be addressed in a separate case.

DATES: Effective Date: September 28, 2006. FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949. Please cite **FAC 2005-13**, FAR case 2004-033. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

10/19/2006

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SUPPLEMENTARY INFORMATION: A. Background Statute. This final rule implements 41 U.S.C. 431a as added by Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year **2005** (Pub. L. 108-375). 41 U.S.C. 431a provides for adjustment every 5 years of acquisition-related thresholds, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. This rule also escalates some nonstatutory acquisition-related thresholds. The statute does not permit escalation of acquisition-related thresholds established by the Davis Bacon Act, the Service Contract Act, or trade agreements. The statute does not authorize the FAR to escalate thresholds originating in executive order or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the executive order or agency regulations are first amended. Public Comments. DoD, GSA, and NASA published a proposed rule in the Federal Register at 70 FR 73415, December 12, **2005**. We received eight responses to the proposed rule (available at <http://www.regulations.gov/> ). All the responses were from Government personnel. Almost all the responses related to the proposed increase in the micro-purchase threshold. The Councils did not agree to any changes to the proposed rule based on the public comments. However, as addressed below, some of the thresholds have changed in the final rule.

## NEWS RELEASE

INTERNET ADDRESS: [www.business.gov](http://www.business.gov)  
SBA Press Release Number: 06-57  
Date : October 12, 2006

CONTACT: Dennis Byrne, 202.205.6567  
[dennis.byrne@sba.gov](mailto:dennis.byrne@sba.gov)  
ALT. CONTACT: Caitlin Martin, 703.207.0933 Ext.106  
[cmartin@jdqcommunications.com](mailto:cmartin@jdqcommunications.com)

### **Business.gov Helps Businesses Meet Federal Compliance Requirements**

**WASHINGTON DC, October 12, 2006** – A newly launched federal government Web site, Business.gov, provides business owners with a one-stop resource that searches the federal government agencies that regulate or serve businesses for compliance information or resources.

The Web site makes it easier to find information on taxes, immigration laws, workplace safety, environmental requirements and other regulations that can present challenges for small and mid-sized businesses.

“The Business Gateway Initiative through Business.gov is an important part of the President's vision of helping American businesses by providing a one-stop portal for federal resources,” said Office of Management and Budget (OMB) E-Gov Administrator Karen Evans. “Business.gov is the Official Business Link to the U.S. Government and is a continuation of agencies working together to improve services to citizens and businesses through technology.”

“The end goal of Business.gov is to cut through the red tape and make it easier for businesses to do business,” said SBA Administrator Steven C. Preston. “This Web site will help streamline access to information and reduce federal compliance barriers to helping businesses save time and money.”

Business.gov will direct businesses to the best sources, reduce compliance barriers and help avoid costly mistakes, allowing them to continue to contribute to the American economy and their communities. Business.gov is managed by the U.S. Small Business Administration (SBA) in a partnership with 21 other federal agencies and is part of the President's Management Agenda.

“The new Business.gov Web site will increase regulatory compliance among businesses, particularly small businesses, while simultaneously reducing the time and effort spent in meeting those requirements,” said William Kovacs, Vice President, Environment, Technology & Regulatory Affairs, U.S. Chamber of Commerce.

Andrew Langer, Manager of Regulatory Policy, National Federation of Independent Businesses added, “Business.gov is an essential tool in the move to make the regulatory process more understandable and accessible. It will serve the twin purposes of increasing compliance and reducing the burdens faced by America's businesses.”

Small firms with fewer than 500 employees represent 99.7% of all businesses. These firms spend 45% more per employee than larger companies to comply with federal regulations including taxes and environmental requirements, according to the SBA.

Originally launched in 2004, Business.gov initially provided information on starting, growing and managing a small business. The new compliance focus is designed to better meet the needs of the business community.

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**Editor's Note: An online press kit is available at <http://www.business.gov/press>. Business.gov logos are available on a limited basis upon request.**



Business.gov is a Presidential Initiative managed by the U.S. Small Business Administration in partnership with 21 U.S. federal government agencies.

As a result of inflation adjustments to acquisition thresholds, which are made every five years, effective September 28, 2006, the following revised acquisition thresholds apply:

SUBJECT	FAR Cite	Prior Threshold	Current (new) Threshold
<b>Micropurchase</b>	2.101	\$2,500.00	\$3,000
<b>Contract Action Report</b>	4.601	\$2,500.00	\$3,000
<b>Commercial Item Test Program</b>	13.5	\$5,000,000	\$5,500,000
<b>Cost or Pricing Data</b>	15.403	\$550,000	\$650,000
<b>Subcontracting Plans</b>	19.7	\$500,000	\$550,000
<b>J&amp;A Approvals</b> (Includes sole source justifications under GSA Schedules)	6.304/8.405-6		
-Contracting Officer		----- \$500,000	\$550,000
-Competition Advocate		-----\$10,000,000	\$11,500,000
-HCA		-----\$75,000,000	\$78,500,000
<b>Bundling</b>			
-Coordinate w/SB Office	7.104	\$7,000,000 \$75M/\$7.5M	\$7,500,000 \$86M/\$8.6M
-Measurable Benefits	7.107		
<b>Restriction - Subk with Suspended/Debarred Companies</b>	9.405/-409	\$25,000	\$30,000
<b>Competitive 8(a) Set-Asides</b>	19.805-1	\$5M/\$3M	\$5.5M/\$3.5M

**Important to note:** The Simplified Acquisition Threshold remains at \$100,000 and the synopsis threshold, because it is tied to a NAFTA requirement, remains at \$25,000.00.

The above table is not all-inclusive, but covers thresholds typically considered for NAVICP procurements. The complete final rule is available through the following link:

<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2006/06-8206.htm>

September 12, 2006

Ms. Barbara English  
Director, Small Business Programs  
Defense Contract Management Agency  
Small Business Programs  
5000 U.S. 1 North  
St. Augustine, FL 32095

**BOEING**

Reference: DCMA-OCA

Dear Ms. English:

After careful consideration, including dialog with the Department of Defense (DOD) and DCMA small business leaders, The Boeing Company has concluded that it is in the best interest of all parties that we voluntarily withdraw from the Comprehensive Subcontracting Plan (CSP) Small Business Test Program.

We believe Individual Subcontracting Plans will more closely align our performance with customer program requirements and provide greater visibility of small business results. It will also enable Boeing to better address program specific small business opportunities and goals.

In addition to overwhelming support from the DOD Agencies for exiting the CSP, Boeing has concluded that the CSP is no longer a viable program for us given our current business environment and long-term strategies, including our:

- Evolving Large-Scale Systems Integrator (LSI) role
- Mature programs reaching the end of their product life cycle (e.g., C-17)
- Foreign Military Sales requiring in-country procurements

Boeing has had a formal small business program for over 50 years and we are committed to small business participation in our procurements. All Boeing business units, including Commercial Airplanes, have small business goals. Our small business dollars continue to increase and are currently at \$5B annually, with \$2B to minority and woman-owned businesses.

We will continue to demonstrate our commitment to small business. Highlights of our 2006 performance include:

- Currently exceeding four out of six of our CSP small business numeric goals. While we are not yet at goal on SDB and SDVOSB, our dollars and percents are above 2005 actuals.
- Achieved a 4-fold increase in Mentor Protégé agreements in less than one year (from 5 to 20 agreements, which we believe is better than any of our peer companies).
- Acknowledgement by our customers as an "industry leader" on SDVOSB. SDVOSB percents and dollars up 40% from 2005. Significant investment to conduct a Technology Forum showcasing the capabilities of SDVOSB's as well as other outreach events.

**BOEING**

- For the second year in a row, Boeing ranked first among corporations and U.S. government agencies in its support of historically black engineering schools, according to the results of a survey by U.S. Black Engineer & Information Technology magazine.
- Awareness campaign sponsored by senior leadership targeted over 500 Boeing program managers for the purpose of increasing involvement in small business activities.
- Identified 20 best practices (aligned with the DCMA recommendations) to be deployed and integrated throughout IDS.

Although we are withdrawing from the CSP, we look forward to partnering with you in modernizing the Test Program to better meet the needs of the DOD, prime contractors and small business.

Pursuant to dialog with the DCMA, this memo closes out all open actions and data requests relative to our ongoing participation in the CSP Test Program. Existing contracts currently covered under the 2006 CSP will continue to be reported in a single semi-annual report. On Friday, September 8, we requested a 3-month extension to our 2006 CSP to effect an orderly and successful transition to individual plans for both Boeing and DOD Contracting Officers. Our formal departure, therefore, would be effective January 1, 2007.

Dan Korte, Joan Robinson-Berry and Carrie Hill will be the Boeing principals in this action and they look forward to working with each of you to achieve a smooth and successful transition.

Sincerely,



Jim Albaugh  
Executive Vice President,  
The Boeing Company  
President and CEO,  
Integrated Defense Systems

cc: Frank Ramos, DOD Small Business Director  
Tracey Pinson, Army Small Business Director  
Oreta Stinson, Navy Small Business Director  
Joe Diamond, Air Force Small Business Director  
Linda Oliver, DOD Small Business Office  
Peg Meehan, DOD Small Business Office  
Lee Rosenberg, Missile Defense Agency Small Business  
Bonnie Soodik, Boeing Senior Vice President, Internal Governance  
Tim Malishenko, Boeing Vice President, Contracts & Pricing  
Dan Korte, Boeing Vice President, IDS Supplier Management  
Carrie Hill, Boeing Director, Compliance Integration  
Joan Robinson-Berry, Boeing Director, IDS Supplier Diversity



FEB 21 2003

GSA Acquisition Letter MV-03-01

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM:

DAVID A. DRABKIN *[Signature]* 02/21/03  
DEPUTY ASSOCIATE ADMINISTRATOR  
FOR ACQUISITION POLICY

SUBJECT:

Federal Acquisition Regulation Class Deviation – Size of  
Business Re-representation

1. Purpose. This Acquisition Letter provides guidance for implementing the class deviation to the Federal Acquisition Regulation (FAR) that I approved on October 10, 2002.
2. Background. The class deviation is applicable to FAR Section 19.301, "Representation by the offeror" and Section 19.804-6(c), "Multiple Award and Federal Supply Schedule contracts." The current FAR permits contractors to keep their size status for the length of the contracts, but did not anticipate extended length contracts such as GSA's Federal Supply Schedule contracts that may go on for 20 years, if all options are exercised.

Consequently, if a small business concern became a large business early on in the contract period, they could keep their small business size status for many years. This may give the now large business concern unfair advantages over small business concerns and result in misleading statistics in reporting dollars awarded to small business concerns in the Federal Procurement Data System (FPDS).

To mitigate this problem, the class deviation requires GSA contracting officers to obtain from a contractor, a re-representation of their size status before exercising any option period for all contracts set forth in paragraph 5.

The Office of Federal Procurement Policy (OFPP) is concerned about large, long-term contracts that allow contractors to masquerade as small businesses and deprive small businesses of opportunities to compete against their peers. OFPP is considering a policy that will require executive agencies to require annual re-representation of their government-wide acquisition contracts regarding size status. Until such time as OFFP provides us with definitive implementation instructions, this acquisition letter will be followed.

U.S. General Services Administration  
1800 F Street, NW  
Washington, DC 20405-0002  
[www.gsa.gov](http://www.gsa.gov)



3. Effective Date. March 1, 2003.

4. Termination Date. This Acquisition Letter will expire February 29, 2004, unless cancelled earlier or extended.

5. Applicability. This Acquisition Letter applies to all Federal Supply Service Multiple Award Schedule contracts and other multiple award type contracts awarded under FAR Part 16 that contain option periods.

6. Reference to Regulations. FAR Parts 16, 17, and 19.

7. Instructions/procedures.

a. For Federal Supply Service Multiple Award Schedule contracts and all other multiple award type contracts, contracting officers must require contractors to re-represent their size status prior to exercising an option period. For existing contract periods, implementation is effective with the next exercise of any option for these contracts. The re-representation (FAR 52.212-3(c) for commercial items or 52.219-1 for other than commercial items) must be incorporated into the contract and implemented for each option period by either:

(1) Receiving a signed statement by the contractor or

(2) Receiving an updated representation (52.212-3(c) or 52.219-1) signed and dated by the contractor.

Any change to a contractor's size status must be reflected in a change to FPDS.

b. When a previously awarded small business re-represents itself as other than small business:

(1) For multiple award contracts that were not awarded as a small business set-aside, the contracting officer must determine the estimated value of the remainder of the contract option periods. If the subcontracting plan threshold is met, the contracting officer must negotiate an acceptable subcontracting plan and make it a part of the contract in accordance with FAR 19.7 and GSAM 519.7, before the option period can be exercised.

(2) If the multiple award contracts were awarded as a small business set-aside, the contracting officer would be precluded from exercising the option for the concern that was no longer an eligible small business.

c. FAR 19.804-6(c) permits an 8(a) business concern to continue to accept new orders under a multiple award or Federal Supply Schedule contract even after a concern's

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program term expires, the concern otherwise exits the 8(a) Program, or the concern becomes other than small for the NAICS code assigned under the contract. However, prior to exercising an option, contracting officers must determine that the 8(a) concern is still eligible for program participation. For Federal Supply Schedule Multiple Award Schedule contracts and other multiple award type contracts that were not awarded as an 8(a) set-aside, if the concern is no longer eligible as an 8(a) contractor, the contracting officer must obtain a re-representation from the contractor, modify the contract, and reflect current business size status in FPDS. If the multiple award contracts were awarded as an 8(a) set-aside, the contracting officer would be precluded from exercising the option for the concern that is no longer eligible for 8(a) program participation.

d. For any solicitation for Federal Supply Service Multiple Award Schedule contracts and any other multiple award type contracts issued on or after March 1, 2003, the contracting officer must include a statement informing the offeror that before exercising any option to a contract, the contractor must re-represent its size status. The contracting officer must include as appropriate one of the following statements or similar language:

(1) For Multiple Awards Not Resulting From a Small Business Set-Aside

"Prior to exercising the option period of the contract, the contractor will be required to re-represent business size status by providing a size status statement to the contracting officer or by completing the applicable portion of 52.212-3, Offer or Representations and Certifications – Commercial Items or 52.219-1, Small Business Program Representations, as applicable to the contract(s). If a previously awarded small business concern re-represents itself as other than small, an acceptable subcontracting plan must be negotiated with the contracting officer if the value of the remainder of the contract option periods exceed the threshold for a subcontracting plan."

(2) For Multiple Awards Resulting From a Small Business Set-Aside

"Prior to exercising the option period of the contract, the contractor will be required to re-represent business size status by providing a size status statement to the contracting officer or by completing the applicable portion of 52.212-3, Offer or Representations and Certifications – Commercial Items or 52.219-1, Small Business Program Representations, as applicable to the contract(s). If a previously awarded small business concern re-represents itself as other than small, the contracting officer shall be precluded from exercising the option."

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(3) For Multiple Awards Resulting From an 8(a) Set-Aside

"Prior to exercising the option period of the contract, the contractor will be required to re-represent business size status and 8(a) program eligibility by providing a size status statement to the contracting officer or by completing the applicable portion of 52.212-3, Offeror Representations and Certifications – Commercial Items or 52.219-1, Small Business Program Representations, as applicable to the contract(s). If a previously awarded 8(a) small business concern re-represents itself as other than small, the contracting officer shall be precluded from exercising the option."



MAR 1 2006

GSA Acquisition Letter MV-03-01  
Supplement Number 1

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM:

EMILY W. MURPHY  
CHIEF ACQUISITION OFFICER

SUBJECT:

Federal Acquisition Regulation Class Deviation – Size of  
Business Re-Representation

1. Purpose. This supplement extends the expiration date in the General Services Administration Acquisition Letter MV-03-01 and modifies information contained in the basic Acquisition Letter.

2. Effective Date. March 01, 2006.

3. Termination Date. Acquisition Letter MV-03-01 and this Supplement Number 1 will expire February 28, 2007, unless cancelled earlier or extended.

4. Instructions/procedures.

a. In Paragraph 2 of Background, change Federal Procurement Data System (FPDS) to Federal Procurement Data System – Next Generation (FPDS-NG).

b. In Paragraph 7 of Instructions/procedures, subparagraph a. (2), change FPDS to FPDS-NG.

c. In Paragraph 7, subparagraph c, change FPDS to FPDS-NG.

will not likely result in (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### D. Executive Order 13132

OFCCP has reviewed the rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

#### E. Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local, or tribal government.

Unfunded Mandates Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of \$100 million or more, or increased expenditures by the private sector of \$100 million or more.

#### List of Subjects in 41 CFR Part 60–2

Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Government contracts, and Labor.

Signed at Washington, DC, this 1st day of September, 2006.

**Victoria A. Lipnic,**

*Assistant Secretary for Employment Standards.*

**Charles E. James, Sr.,**

*Deputy Assistant Secretary for Federal Contract Compliance.*

#### Text of Rule

■ In consideration of the foregoing the Office of Federal Contract Compliance Programs, Employment Standards Administration, Department of Labor, amends part 60–2 of Title 41 of the Code of Federal Regulations as follows:

#### PART 60–2—AFFIRMATIVE ACTION PROGRAMS

■ 1. The authority citation for part 60–2 continues to read as follows:

**Authority:** E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086, 43 FR 46501.

#### § 60–2.18 [Removed and Reserved]

■ 2. Remove and reserve § 60–2.18.

{FR Doc. E6–14922 Filed 9–7–06; 8:45 am}

**BILLING CODE 4510–CM–P**

### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Parts 202, 210, 213, 215, and 219

**RIN 0750–AF36**

#### Defense Federal Acquisition Regulation Supplement; Limitations on Tiered Evaluation of Offers (DFARS Case 2006–D009)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2006. Section 816 requires DoD to prescribe guidance on the use of tiered evaluation of offers for contracts and for task or delivery orders under contracts.

**DATES:** *Effective date:* September 8, 2006.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before November 7, 2006, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2006–D009, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.  
○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2006–D009 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Deborah Tronic, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

[www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, (703) 602–0289.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule adds DFARS policy to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 816 requires DoD to prescribe guidance on the use of tiered evaluation of offers for contracts and for task or delivery orders under contracts. The guidance must include a prohibition on the use of tiered evaluation of offers unless the contracting officer (1) has conducted market research in accordance with Part 10 of the Federal Acquisition Regulation; (2) is unable, after conducting market research, to determine whether or not a sufficient number of qualified small businesses are available to justify limiting competition for the contract or order; and (3) includes in the contract file a written explanation of why the contracting officer was unable to make the determination.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relates to market research and documentation requirements performed by the Government. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D009.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist

to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 816 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). Section 816 requires DoD to prescribe guidance prohibiting the use of tiered evaluation of offers unless the contracting officer has complied with certain market research and documentation requirements. Comments received in response to this interim rule will be considered in the formation of the final rule.

#### **List of Subjects in 48 CFR Parts 202, 210, 213, 215, and 219**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 202, 210, 213, 215, and 219 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202, 210, 213, 215, and 219 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### **PART 202—DEFINITIONS**

■ 2. Section 202.101 is amended by adding a definition of "Tiered evaluation of offers" to read as follows:

##### **202.101 Definitions.**

\* \* \* \* \*

*Tiered evaluation of offers*, also known as *cascading evaluation of offers*, means a procedure used in negotiated acquisitions, when market research is inconclusive for justifying limiting competition to small business concerns, whereby the contracting officer—

(1) Solicits and receives offers from both small and other than small business concerns;

(2) Establishes a tiered or cascading order of precedence for evaluating offers that is specified in the solicitation; and

(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

#### **PART 210—MARKET RESEARCH**

■ 3. Section 210.001 is revised to read as follows:

##### **210.001 Policy.**

(a) In addition to the requirements of FAR 10.001(a), agencies shall—

(i) Conduct market research appropriate to the circumstances before—

(A) Soliciting offers for acquisitions that could lead to a consolidation of contract requirements as defined in 207.170-2; or

(B) Issuing a solicitation with tiered evaluation of offers (Section 816 of Public Law 109-163); and

(ii) Use the results of market research to determine—

(A) Whether consolidation of contract requirements is necessary and justified in accordance with § 207.170-3; or

(B) Whether the criteria in FAR part 19 are met for setting aside the acquisition for small business or, for a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract. If the contracting officer cannot determine whether the criteria are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109-163).

#### **PART 213—SIMPLIFIED ACQUISITION PROCEDURES**

■ 4. Section 213.106-1-70 is added to read as follows:

##### **213.106-1-70 Soliciting competition—tiered evaluation of offers.**

(a) The tiered or cascading order of precedence used for tiered evaluation of offers shall be consistent with FAR part 19.

(b) Consideration shall be given to the tiers of small businesses (e.g., 8(a), HUBZone small business, service-disabled veteran-owned small business, small business) before evaluating offers from other than small business concerns.

(c) Before issuing a solicitation with a tiered evaluation of offers—(1) The contracting officer shall conduct market research, in accordance with FAR part 10 and part 210, to determine—

(i) Whether the criteria in FAR part 19 are met for setting aside the acquisition for small business; or

(ii) For a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract; and

(2) If the contracting officer cannot determine whether the criteria in paragraph (c)(1) of this section are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109-163).

#### **PART 215—CONTRACTING BY NEGOTIATION**

■ 5. Subpart 215.2 is added to read as follows:

#### **Subpart 215.2—Solicitation and Receipt of Proposals and Information.**

##### **215.203-70 Requests for proposals—tiered evaluation of offers.**

(a) The tiered or cascading order of precedence used for tiered evaluation of offers shall be consistent with FAR part 19.

(b) Consideration shall be given to the tiers of small businesses (e.g., 8(a), HUBZone small business, service-disabled veteran-owned small business, small business) before evaluating offers from other than small business concerns.

(c) Before issuing a solicitation with a tiered evaluation of offers—

(1) The contracting officer shall conduct market research, in accordance with FAR part 10 and part 210, to determine—

(i) Whether the criteria in FAR part 19 are met for setting aside the acquisition for small business; or

(ii) For a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract; and

(2) If the contracting officer cannot determine whether the criteria in paragraph (c)(1) of this section are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109-163).

#### **PART 219—SMALL BUSINESS PROGRAMS**

■ 6. Section 219.1102 is amended by adding paragraph (c) to read as follows:

##### **219.1102 Applicability.**

\* \* \* \* \*

(c) Also, do not use the price evaluation adjustment in acquisitions that use tiered evaluation of offers, until a tier is reached that considers offers from other than small business concerns.

■ 7. Subpart 219.13 is added to read as follows:

##### **Subpart 219.13—Historically Underutilized Business Zone (HUBZone) Program**

##### **219.1307 Price evaluation preference for HUBZone small business concerns.**

(a) Also, do not use the price evaluation preference in acquisitions that use tiered evaluation of offers, until a tier is reached that considers offers from other than small business concerns.

[FR Doc. E6-14896 Filed 9-7-06; 8:45 am]

BILLING CODE 5001-08-P



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

*Rec'd in ASBP*  
SEP 27 2006

SEP 26 2006

Mr. Frank M. Ramos  
Director  
Office of Small Business Programs  
U.S. Department of Defense  
201 12<sup>th</sup> Street South, Suite 406  
Arlington, VA 22202

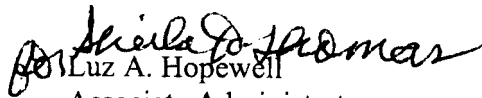
Dear Mr. Ramos:

This amendment is issued pursuant to the Partnership Agreement (PA) between your agency and the U.S. Small Business Administration. The purpose of this amendment is to extend the term of the PA. All other terms and conditions of the PA remain unchanged.

The expiration date is hereby extended until December 1, 2006 or until the Partnership Agreement is accepted by both agencies.

If you have any questions or require additional information, please contact Darnell Guidry at 202-205-6381.

Sincerely,

  
Luz A. Hopewell  
Associate Administrator  
Office of Business Development

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